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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 279.

IN THE MATTER OF THE APPLICATION

of

CELIA WONG,

Petitioner,

against

MAURICE FINKELSTEIN, Chairman, and LOUIS TOTH, individually and as members of, and constituting, the Temporary City Housing Rent Commission of the City of New York,

Respondents,

To review and annul the determination of respondents denying the application of petitioner for a certificate of eviction and for an order to compel the issuance of such certificate, being a duty specifically enjoined upon respondents by law, pursuant to Article 78, Civil Practice Act.

PETITIONER'S REPLY BRIEF—IN FURTHER SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS.

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September 21, 1949.

INDEX.

PAGE

POINT I. The Court below by-passed the constitutional question. (299 N. Y. 205). Respondent's brief evades all discussion of the constitutionality of their Local Law 66 1

POINT II. Each of the three cases, cited and relied upon by the Court below, in support of the proposition that petitioner's procedure was wrong, recites the existence of a co-existent remedy—employable without risk of criminal prosecution 3

CONCLUSION 4

TABLE OF CASES.

Bowles v. *Rugg*, 57 Fed. (2nd) 116, 119 2

Re. Durr v. *Voorhis*, 229 N. Y. 382 3

Economy etc. v. *Berry*, 234 App. Div. 214 ..... 3, 4

Re. Hart, 161 N. Y. 507 ..... 3, 4

Matter of Pardee, 193 Misc. 269 2

New York Foreign T. Z. O. v. *State Liquor Authority*, 285 N. Y. 272, 278 3

Ex Parte Siebold, 100 U. S. 371, 392 2

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PETITIONER'S REPLY BRIEF—IN FURTHER SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS.

POINT I.

The Court below by-passed the constitutional question. (299 N. Y. 205). Respondent's brief evades all discussion of the constitutionality of their Local Law 66.

If the local law is unconstitutional—and it is, indubitably (please see our Points I, II and III, pages 13-22, Main Brief), this Petitioner was entitled to relief from the Court of last resort in her own State. Failing that, she is entitled

to that relief at the hands of this Court, after 18 months of effort. Neither the Court of first instance (193 Misc. 289), nor the intermediate Appellate Court (275 App. Div. 686) offered any suggestion, even, that there was involved "a point of procedural law."

Petitioner's procedure was proper. She had, and has, no other remedy toward which reputable counsel would direct her. At pages 4 and 5 of their brief, Respondents quote at length *Matter of Pardee,* 193 Misc. 269—from *obiter dicta* in the Special Term opinion—

> "Her remedy would seem to be the institution of a summary proceeding or action to obtain possession of the property without the Certificate required" by the Local Law, "on the theory that the requirement of such a Certificate in a case where the owner seeks possession for the purpose of withdrawing property from the rental market is unconstitutional."

and then, ignoring the principle of *Ex Parte Siebold, (post)*, goes on to deny any authority in Respondents which does not emanate from "the local law." Respondents, not only as citizens, but also as city officials are bound also by Federal Law.

> "The provisions of the Constitution of the United States and the laws of the United States are the supreme law of the land and to these every citizen owes obedience, whether in his individual or official capacity."
>
> *Ex Parte Siebold,* 100 U. S. 371, 392.
>
> "The Constitution and laws of the United States are just as binding upon the State, as they are upon the Federal, courts."
>
> *Bowles* v. *Rugg,* 57 Fed. (2nd) 116, 119.

The Petitioner did not choose *to violate the penal law.* If this gentlewoman had proceeded to enforce her Fed-

erally granted right in the manner the learned Justice at Special Term indicates she should have done, then, by the mere *institution* of a summary proceeding without first having sought and received the favor of these Respondents, she would have subjected herself to criminal prosecution. Moreover, her counsel could not be permitted to assume the risk for, even if he had proceeded *without her knowledge or consent,* still she would have been

> "subject to a fine not exceeding the sum of $500 or to imprisonment for a term not exceeding 90 days or both." (Reg. II, Art. VII, Sec. 1—pages 9-10, Petition.)

POINT II.

Each of the three cases, cited and relied upon by the Court below, in support of the proposition that petitioner's procedure was wrong, recites the existence of a co-existent remedy—employable without risk of criminal prosecution.

In an earlier decision, the Court below clearly indicated that a citizen in the position of this Petitioner need not undertake such a "remedy of negative character" and "meanwhile, although the facts are not disputed • • • run the risk of criminal prosecution." (*New York Foreign T. Z. O.* v. *State Liquor Authority,* 285 N. Y. 272, 278.)

The three cases cited in the opinion and relied upon below are:

(1) *Re. Durr* v. *Voorhis,* 229 N. Y. 382;

(2) *Re. Hart,* 161 N. Y. 507;

(3) *Economy etc.* v. *Berry,* 234 App. Div. 214.

In *Matter of Burr* (*supra*), the Court said:

> "The method of the respondents does not unreasonably impair the rights of the appellant or the

> other candidates for the office of justice of the Supreme Court, or of the electors, and is not beyond the constitutional power of the legislature."

In *Matter of Hart* (*supra*), the opinion recites, of an application for a Writ of Mandamus to compel the Board of Canvassers to grant a certificate of election:

> "In such a case, where it appears that the office is in the possession of another claiming title thereto, the remedy of the relator is by an action in the nature of *quo warranto,* brought by the attorney general against the person who, it is claimed, unlawfully holds the office."

In *Economy etc.* v. *Berry* (*supra*), the relator sued to compel the Comptroller to strike from the records an assessment for street improvements. A proper remedy, said the Court,—"an adequate remedy at law"—lay with movant and "Where the petitioner is afforded another remedy, mandamus will not lie."

Conclusion.

This Petitioner seeks security from the ravages of alien residents under her own small roof. Too long have our Courts neglected New York City landlords such as she, who seek only to make their houses once again homes. The Writ should be granted.

Respectfully submitted,

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MILO O. BENNETT,
Of Counsel.

Dated, New York, N. Y., September 21, 1949.